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ABSTRACT

This summary provides an overview of developments in school finance litigation since the United States Supreme Court's historic and lamentable 1973 ruling in "San Antonio Independent School District v. Rodriguez" that wealth-based discrimination in educational expenditures does not violate the equal protection clause of the Fourteenth Amendment to the federal Constitution. The failure of the Supreme Court to rule the Texas school finance system unconstitutional shifted school finance litigation to the state courts. The state cases are widely diverse in concept and scope depending on the state constitutional language, the mechanics of the school finance statute involved, and the factual setting. Some cases are broad-based attacks on the inequality of educational opportunity resulting from the systems concerned. Others focus on the state's failure to equalize for the effects of municipal overburden, urban education costs, or geographic concentrations of disadvantaged children. Fourteen pending cases in as many states and 22 terminated cases from 17 states, none decided prior to May 1974, are analyzed. (Author/PGD)

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UPDATE ON STATE-WIDE SCHOOL FINANCE CASES

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April, 1980
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INTRODUCTION

This summary, prepared by the School Finance Project of the Laywers' Committee, provides an overview of developments in school finance litigation since the United States Supreme Court's historic and lamentable ruling in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), that wealth-based discrimination in educational expenditures does not violate the equal protection clause of the 14th Amendment to the federal constitution. The failure of the Supreme Court to rule the Texas school finance system unconstitutional shifted school finance litigation to the state courts.

The state cases are widely diverse in concept and scope depending upon the state constitutional language, the mechanics of the school finance statute, and the factual setting. A number of cases, following the *Rodriguez* model, are broad-based attacks upon the inequality of educational opportunity resulting from statewide school finance systems which make educational funding a function of district property wealth. *Serrano v. Priest* (Cal.), *Horton v. Meskill* (Conn.), *Thomas v. Stewart* (Georgia), *Olsen v. Oregon,* and *Washakie School District No. 1 v. Herschler* (Wyoming). In others, the primary focus is on the state's failure to equalize for the effects of municipal overburden, the higher costs of urban education, or the greater concentrations of disadvantaged children in urban schools. *Board of Education, Levittown v. Nyquist* (New York). Still others challenge the delegation of the state's constitutional obligation to local voters to provide by referenda the funds necessary for adequate or equal educational opportunities. *Seattle School District No. 1 v. State of Washington.*

The pace of school finance reform has accelerated rapidly in recent years. In the last two years alone, courts in four additional states have held their school finance systems unconstitutional. In September 1978, the Supreme Court of Washington affirmed the trial court's decision in *Seattle School District No. 1 v. State of Washington* holding the Washington foundation program unconstitutional as applied to the Seattle school district. In June 1978, the Nassau County Supreme Court held the New York school finance system unconstitutional with respect to claims of low property wealth districts and urban intervenors. *Board of Education, Levittown v. Nyquist.* Following a lengthy trial in Colorado, the District Court of Denver County ruled on March 13, 1979, that the entire state system of financing is unconstitutional under the "thorough and uniform" clause and equal protection guar-

antees of the state and federal constitutions. *Lujan v. Colorado State Board of Education.* This trend toward reform culminated in the recent opinion of the Wyoming Supreme Court that held the state financing scheme unconstitutional without a trial. *Washakie County School District No. 1 v. Herschler.*

This is the sixth summary of school finance cases which the Project has prepared. Earlier summaries were published in January 1972, May 1974, January 1976, February 1977, and February 1978. All of the cases described in the February 1978 summary are included here. Cases decided prior to May 1974 are not included in the current update.

Additional copies of this April 1980 summary are available for $2.00 per copy.

School Finance Project
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PENDING CASES

ARKANSAS

Alma School District No. 30 et al. v. DuPree, No. 77-406 (Chancery Court of Pulaski County, Arkansas)

Parties. Plaintiffs are school districts which allegedly have been discriminated against in the distribution of Minimum Foundation Program Aid funds and residents, taxpayers, patrons, school children, and parents of school children in those districts. Defendants are the chairman of the State Board of Education, members of the State Board of Education, the State Treasurer, State Auditor, and Chief Fiscal Officer.

Shortly after the suit was filed the Clover Bend School District No. 12 of Laurence County intervened as a defendant individually and as a representative of all school districts that need the Minimum Foundation Program Aid funds, and was joined by members of the Board of Education, residents, patrons, taxpayers, and children in the district, intervening on behalf of all parents and children in the state attending schools in such districts. On December 29, 1978, two other school districts intervened as defendants (Little Rock and North Little Rock).

Description. This is a suit for declaratory and injunctive relief to hold Arkansas' Minimum Foundation Program unconstitutional under the state constitution. The suit attacks the hold harmless provision of the Act which allegedly preserves the inequities that existed in distribution of state funds prior to the enactment of the statute in 1951; flat grants for increases in teacher salaries; guarantees of aid levels to encourage consolidations; the failure to meet the problem of shifting populations; the legislative allocation of funds for vocational-technical education training programs that only benefits school districts which already have such programs in effect; and the allocation of funds for special education on a per teacher unit basis rather than on a per student in ADA basis. The result, plaintiffs allege, is a system which denies them substantially equal educational resources and opportunities, perpetuates inequities carried forward over the years, requires them to levy higher taxes on their property to provide an education which is substantially inferior to other districts in the state, and which makes the quality of education a function of the geographical

location of the particular school district. They claim that such a system violates Article 14 of the Arkansas Constitution which requires the state to "maintain a general, suitable, and efficient system of free public schools," and the equal protection clause of the state constitution.

Status. Plaintiffs filed their original complaint on January 3, 1977. Plaintiffs filed amended and substituted complaints on June 9, 1978, and September 17, 1979. Original defendants and intervenors have answered.

Trial preparation is underway. A trial is expected to take place in 1980 in Little Rock.

CALIFORNIA

Serrano v. Priest, 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P.2d 1241 (1971), *subsequent opinion,* 135 Cal. Rptr. 345, 557 P.2d 929 (Dec. 30, 1976), *rehearing denied,* Jan. 27, 1977; *as modified* Feb. 1, 1977.

This is the landmark case in which the California Supreme Court held that the state school finance system was unconstitutional under the state's equal protection clause because it made the quality of education a function of local school district taxable wealth.

Parties. Plaintiffs are school children and their tax paying parents from a number of Los Angeles county school districts. Defendants are the Treasurer, Tax Collector and Superintendent of Public Schools for Los Angeles County and the Treasurer, Comptroller and Superintendent of Public Instruction for the State of California. Certain property wealthy school districts have intervened as additional defendants.

Description. The complaint filed in *Serrano* became the model for most other suits filed after the California Supreme Court decision in this case. The suit challenged discrimination against both children and taxpayers in poor districts. Plaintiffs claimed that there were substantial disparities among school districts in California in tax base per pupil, that these disparities resulted in substantial disparities among districts in dollar amounts spent per pupil for public education, and that the educational opportunities available to children in property poor districts were substantially inferior to those available for children of wealthier districts.

Status. This suit was filed on August 23, 1968. The complaint was dismissed by the California Superior Court which was affirmed by the California Court of Appeals. On August 30, 1971, the California Supreme Court reversed the decision dismissing the complaint, and remanded the case to the trial court for further proceedings. The California Supreme Court upheld the complaint primarily on the basis of the claim that the education finance system in California makes the quality of education for school age children in California a function of the wealth of a child's parents and neighbors as measured by the tax base of the school district in which the child resides. However, the court made clear that the plaintiffs had to prove their allegations at trial in order for the California school finance system to be held unconstitutional.

On April 10, 1974, after a five month trial, the trial court declared the California system of school finance unconstitutional in violation of the equal protection provisions in the state constitution. In a lengthy opinion, the trial court found that the current financing scheme in California, notwithstanding the significant increase in state aid enacted in 1972, still made the quality of education a function of the local wealth of school districts. The trial court held that the plaintiffs "established the truth of the allegation in their complaint," and it pointed out the following objectionable features in the current financing system:

> The basic aid payment of $125 per pupil to high wealth school districts;
>
> The right of voters of each school district to vote tax overrides and unlimited revenues at their discretion;
>
> Wealth-related disparities of greater than $100 between school districts in per pupil expenditures, apart from the categorical aid, special needs programs, and wealth-related variations in tax rates between school districts. (These variations are to be reduced within six years to insignificant differences.)

The court found that as a result of these features, great per pupil expenditure disparities are created between districts because high wealth districts can reach the foundation-program levels with less tax effort than low-wealth districts, and above the foundation-program levels, local property wealth is the primary determinant of the amount

of revenue generated for a given tax rate, thus denying low-wealth school districts an equal opportunity to exceed foundation-program levels.

The county and wealthy district defendants appealed the trial court's decision to the California Supreme Court. The state officials who are defendants did not appeal, and two state defendants, Superintendent of Public Instruction Wilson Riles and State Treasurer Jessie Unruh filed briefs which support plaintiffs.

On December 30, 1976, the California Supreme Court affirmed the trial court's finding that the California school finance system was unconstitutional under the equal protection provisions of the state constitution—unaided by the 14th Amendment. *Serrano II.*

In 1977 the California legislature passed A.B. 65 which modified and provided additional state funding for the educational financing system held unconstitutional in *Serrano II.* In December 1977, plaintiffs filed a writ of mandate in the California Supreme Court to invalidate those features of the California school financing system which, after the enactment of A.B. 65, are alleged to continue to deny them equal protection of the laws by impermissibly conditioning educational quality in each school district on the value of real property in the district. Specifically, plaintiffs challenge (a) the failure of the legislation to power equalize permissive local tax levy overrides for special purposes such as capital outlay, (b) the inclusion of previously passed but unused (and unequalized) voted overrides in the calculation of the revenue limits for high wealth districts, (c) the retention of basic aid payments to wealthy districts without any compensating benefit to poor districts, and (d) the continued ability of high wealth school districts to reach the state foundation program level with less tax effort than required for low wealth districts.

In January 1978, the California Supreme Court refused to grant the petition for an original writ of mandate. In December 1979, the California Superior Court granted plaintiffs' motion to reopen the case in order to challenge the California financing system as modified by A.B. 65.

COLORADO

Lujan v. Colorado State Board of Education, District Court of Denver County, C.A. No. C-73688.

Parties. Plaintiffs are 68 school children who attend public schools in 16 low-wealth districts in Colorado. They represent a class of all children in the named districts. Defendants are the State Board of Education and its members, the Commissioner of Education, the State Treasurer, and the State Controller.

Description. This suit seeks a declaratory judgment that the means of financing elementary and secondary education in Colorado violates Art. IX Sec. 2 of the state constitution which requires the legislature to "provide for the establishment and maintenance of a thorough and uniform system of free schools"; the due process and equal protection guarantees of the state constitution; and the equal protection clause of the 14th Amendment. The suit attacks several aspects of the Public School Finance Act of 1973, as amended in 1977, including the use of flat grants and a device for controlling expenditures known as the Authorized Revenue Base (ARB). Plaintiffs allege that the ARB disadvantages low-wealth districts because it builds in expenditure disparities which existed prior to 1973.

Status. Plaintiffs' complaint was filed on August 11, 1977. On October 11, 1977, the State filed a motion to dismiss on the grounds that the plaintiffs had failed to join an indispensable party, i.e., the General Assembly; that the suit could not be maintained against the named administrative officers; and because the complaint failed to state a claim upon which relief could be granted.

On December 12, 1977, the court denied this motion on all grounds. In a 30-page opinion, the court ruled that the General Assembly is neither an indispensable nor even a proper party to the suit since no relief was sought against it. On the other hand, the executive officers vested with the responsibility of administering the system of financing the schools are held to be the proper defendants in a suit challenging the constitutionality of the Act. On the merits, the court held that the complaint states a claim upon which relief can be granted. It found that education is a fundamental interest, thus triggering the strict scrutiny standard of review. The court held that *San Antonio Independent School District v. Rodriguez* does not say that a violation of the federal equal protection clause could never be proved and therefore ruled that plaintiffs' contentions under the 14th Amendment cannot be resolved as a matter of law on the pleadings.

On March 13, 1979, the court held the Colorado school finance sys-

tem unconstitutional following a five week trial. The court's decision was based on state and federal equal protection guarantees and the requirement that the legislature provide a "thorough and uniform" system of education. Under the court's equal protection analysis, equal educational opportunity is a fundamental interest under state law. The court also found that the wealth discrimination affecting plaintiffs' property poor districts, which contain disproportionate numbers of low-income persons, creates a suspect classification under state and federal standards. Consequently, the court strictly scrutinized the property tax related expenditure disparities among districts finding that no compelling governmental interest justified them. The court also found the system wanting under the intermediate standard of review requiring a substantial relationship between the objectives of the system and the means for accomplishing these objectives.

The court did not order specific remedial relief, but made it clear that in the absence of appropriate legislative action within two years, the judiciary would be prepared to intervene and order further relief.

The case is currently on appeal to the Colorado Supreme Court. Oral argument has not yet been set.

CONNECTICUT

Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977), *affirming,* 31 Conn. Supp. 377, 332 A.2d 813 (Hartford County Superior Court 1974)

Parties. The plaintiffs are school children enrolled in elementary, middle, and high schools in the town of Canton, Connecticut. The defendants include the Governor, Treasurer, and Comptroller of the State, the State Commissioner of Education, and members of the State Board of Education, the Canton Board of Education, and the Canton Board of Finance.

Description. The case sought a declaratory judgment that Connecticut's system of financing public elementary and secondary education, as applied to the Town of Canton, violated the Connecticut and federal constitutions. The plaintiffs sought an order in equity directing the defendants to cease implementing the existing system except as necessary to effect an orderly transition to a constitutional system, and further requested the court to retain jurisdiction to assure

a transition with all deliberate speed. The plaintiffs' claims were based on Article I, Sections I and 20, of the Connecticut Constitution; the Fourteenth Amendment to the federal Constitution, providing for equal protection of the laws; and Article VIII, Section I, of the Connecticut Constitution, which states:

> There shall always be free public elementary and secondary schools in the State. The General Assembly shall implement this principle by appropriate legislation.

The public schools of Canton were financed by taxes imposed locally on the assessed valuation of property within the town and state aid in the form of a flat grant depending on the average number of pupils in daily attendance. The state provided additional payments for exceptional and handicapped children, school construction, and pupil transportation.

The greatest contribution to the cost of public education came from the local property tax, which comprised 70 percent of the total. The state provided between 20-25 percent and the federal government 5 percent or less. In 1972-73, the flat grant (which was unrelated to the ability of towns to finance education) accounted for 80.1 percent of the state's contribution. At the time of trial in 1974, Connecticut ranked 50th among the states in efforts to equalize expenditures, 47th in the percent of educational funding coming from the state, and second in the percent of educational funding coming from local government. The evidence showed that "taxpayers in property-poor towns such as Canton pay higher tax rates for education than taxpayers in property-rich towns. The higher tax rates generate tax revenues in comparatively small amounts and property-poor towns cannot afford to spend for the education of their pupils, on a per pupil basis, the same amounts that property-rich towns do."

Status. On December 26, 1974, the Superior Court of Hartford County issued a memorandum decision in substantial agreement with the plaintiffs' contentions. On May 19, 1977, the Connecticut Supreme Court affirmed the trial court's judgment that the state's system of financing public elementary and secondary education is unconstitutional. In a 4-1 decision, the court held that Connecticut's statute violated both the equal protection clause of Article I, Sections I and 20, and the education clause contained in Article VII, Section I, of the state constitution. The court began its discussion by noting that the

equal protection clause of the state and federal constitutions have a like meaning and impose similar constitutional limitations. Thus, the validity of a legislative classification under Connecticut law depends upon whether the right involved is characterized as "fundamental" or not. If the right is deemed fundamental, as with federal equal protection analysis, the "strict scrutiny" standard of review is used rather than the rational basis test.

In determining whether education is a fundamental right, the court eschewed "conventional tests or the application of mechanical standards." The court found that, not only is education a fundamental right because it is explicitly recognized by Article VIII, Section I of the constitution, but also because the entire history of the state demonstrates a commitment to educate the young. The court also found an historical and textual commitment that each child is entitled to *equal* educational opportunities.

Applying the strict scrutiny standard of review, the court concluded that, because the present legislation depends "primarily on a local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program and with no significant equalizing state support *[it]* is not 'appropriate legislation' (Article VIII, Section 1) to implement the requirement that the state provide a substantially equal educational opportunity to its youth in its free public elementary and secondary schools." The court stressed that absolute equality was not required to satisfy the constitutional mandate and that the state can take into consideration "differences in educational costs based on relevant economic and educational factors and on course offerings of special interest in diverse communities."

With respect to specific remedial relief, the court stayed its hand to give the General Assembly an opportunity to enact new legislation but made clear that, in the absence of appropriate legislative action, the judiciary would be prepared to intervene and order further relief.

On May 4, 1978, no alternate state financing system having been implemented, plaintiffs moved for an order to show cause why the unconstitutional school finance system should not be enjoined. On May 17, 1978, the boards of education and municipalities of the three largest districts in the state, Hartford, New Haven and Bridgeport and children residing therein sought to intervene to protect their special interests in any relief the court would order. In September, 1978, the

trial court ordered the state to enact a constitutional system by May 1, 1979. The urban intervenors' motion was continued until after this date.

In April, 1979, the legislature enacted, but did not fully fund, a revised formula for distributing state aid to education which provides for district power equalizing. The revised plan contains a minimum aid provision of $250 per pupil regardless of district wealth, a maximum aid lid, hold harmless provisions, a five year phase-in, and a formula which calculates wealth in per capita terms while defining need in per pupil terms (with provisions for the number of children on state welfare and from low-income families).

Although this formula appears to be substantially short of what the court required, plaintiffs have postponed any challenge to it until its effects are known.

GEORGIA

Thomas v. Stewart, Docket No. 8275 (Polk County Superior Court)

Parties. The plaintiffs include (1) members of the Whitfield County Board of Education suing in their official capacities and in their individual capacities as representatives of a class of property owners and (2) children who attend the public schools in the county. The defendants are the members of the Georgia State Board of Education, the State Superintendent of Schools and the Attorney General.

Description. As originally drawn, plaintiffs' complaint alleged that the Georgia statutory scheme for financing public education (dependent largely on a Minimum Foundation Program), failed to comply with Article VIII, Section 1, Paragraph 1 of the state constitution, which imposed a "primary obligation" on government to provide an adequate education for all citizens. The complaint also rested on state constitutional provisions requiring uniform taxation among the same class of subjects. Subsequent to the filing of the complaint, Georgia enacted new legislation designed to remove the disparities between school districts caused by widely varying property values. Although the new legislation made provision for district power equalization, funding was not provided. In September, 1975, plaintiffs amended their complaint to allege that the new legislation, absent the operation

of the district power equalization provision, has in effect carried forward the same inequities that were built into the Minimum Foundation Plan it replaced.

Status. Original complaint filed December 19, 1974; answer filed January 27, 1975; plaintiffs' first amended complaint filed September 1975. Preparation for trial is under way.

KANSAS

Knowles v. State Board of Education, 219 Kan. 271, 547 P.2d 699 (1976)

Parties. Plaintiffs are residents and taxpayers of certain Kansas school districts, students enrolled in school districts adversely affected by the School Finance Act, and 41 unified school districts. Defendants are the Attorney General, the State Board of Education, Director of Accounts and Reports, the State Treasurer and the Commissioner of Education.

Description. This suit sought a declaratory judgment that the School District Equalization Act of 1973 was unconstitutional. Plaintiffs contended that the state's real estate sales ratio study, which was an integral part of the distribution system for state aid, actually gave a distorted picture of district property wealth. Plaintiffs alleged that the Act violated Article 6, Section 1, Article 6, Section 5, Article 6, Section 6(b), and Article 11, Section 1 of the Kansas Constitution, the equal protection clause of the 14th Amendment of the U.S. Constitution and Section 1 of the Kansas Bill of Rights.

On February 25, 1975, the trial court upheld plaintiffs' claims and declared the statute unconstitutional. The court found that the distribution of state funds resulted in unequal benefits to certain school districts and an unequal burden of *ad valorem* school taxes on taxpayers in various districts with no rational basis. The court also found the Act insufficient to provide a fundamental education for the students within the plaintiffs' districts on a rationally equal basis with students of other districts within the state. The court set July 1, 1975, for an injunction to take effect if the legislature, which was then in session, did not correct the problem. The legislature repealed various sections of the law and enacted amendments. The court then

dismissed the case as moot and refused to consider arguments by the plaintiffs that the amendments had not worked any material changes. Plaintiffs appealed.

Status. The Supreme Court reversed and remanded for consideration by the trial court as to the validity of the 1975 Act. The Court noted six changes that appeared to remove some of the objectionable features of the 1973 law, but was unwilling to decide the constitutionality of the new system without a factual record developed at trial. The Court distinguished cases in which the challenge was to the basic theory of the law itself rather than to the operation and effect of the law on particular persons.

In holding that the trial court had improperly dismissed the case as moot, the Court pointed out that the amendments had not changed the "design" of the statute, and that the right of affected persons to challenge such legislation should not be aborted every time the legislature enacts an amendment.

Plaintiffs filed a Supplemental and Amended Petition on March 5, 1977, and have amended their petition yearly to address changes in the law enacted by the legislature. Plaintiffs maintain that these amendments have not redressed inequalities in the distribution system of state funds. The legislature is currently considering further amendments to the school finance law.

MARYLAND

Somerset County Board of Education v. Hornbeck, File No. A-58438, Docket 119A, Folio 159 (Circuit Court of Baltimore City).

Parties. Plaintiffs are the Boards of Education and Superintendents of Somerset, Caroline and St. Mary's Counties, Baltimore City and the Mayor of Baltimore. Also included as plaintiffs are school children, parents, residents and taxpayers of these school districts. Defendants are the State Superintendent of Schools and the Comptroller of the Treasury.

Description. The public schools of Maryland are financed by taxes imposed locally and by state aid in the form of a minimum foundation program of $690 per pupil under which local districts share in

proportion to wealth (although all districts receive some aid). The state also provides density aid to Baltimore of $100 per student to be used largely for programs for students with special needs. In addition, the state provides payments to all districts for handicapped children, teacher retirement and pupil transportation. The minimum foundation level is lower than annual expenditures per pupil in even the poorest districts. Therefore local taxation is an important source of revenues, providing approximately 60% of revenues statewide for education. Great revenue disparities exist among districts since taxpayers in property-poor districts pay higher tax rates for education yet generate revenues in far smaller amounts.

The complaint seeks a declaratory judgment that the Maryland school system violates the equal protection guarantee found in the due process clause of Article 23 of Maryland's Declaration of Rights; the equal protection clause of the 14th Amendment; and Article VIII, Section 1 of the state constitution which requires the establishment of a "thorough and efficient" system of education. Plaintiffs claim that the system discriminates (1) against all students attending schools in fiscally distressed districts by providing inadequate educational opportunity; (2) against poor children in fiscally distressed districts and throughout the state by failing to compensate for their special needs; and (3) against residents and taxpayers in Baltimore by compelling the city to impose unparalleled tax rates which render revenues that permit only a reduced level of education and by failing to take into consideration municipal overburden in allocating state funds.

Status. Plaintiffs' complaint was filed on February 15, 1979. Defendants answered on March 19, 1979. Montgomery County's motion to intervene as a party defendant was granted on June 3, 1979. Defendants filed a Motion for Summary Judgment. A trial date has been set for September, 1980.

MASSACHUSETTS

Webby v. King, No. 78-179 Civil (Supreme Judicial Court)

Parties. Plaintiffs are ten local school committees and school children enrolled in public schools located in the districts under the control of plaintiff committees. Plaintiff students seek to represent a class of all children in the named districts. Defendants are the Governor,

Board of Education, Commissioner of Education and the Treasurer of the Commonwealth of Massachusetts.

Description. The complaint alleges that as of FY 1975-1976 Massachusetts relied on local sources of revenue for 64% of its revenues for educational expenditures. With only 32% deriving from the state, Massachusetts ranked 44th among the states with respect to the state share of the total state and local expenditures for public education. State aid in Massachusetts is in the form of categorical grants made to districts regardless of wealth, and general aid distributed according to G.L.C. 70 (Chapter 70). Old Chapter 70, repealed in 1978, reimbursed districts for a percentage of their actual operating expenses in inverse proportion to the tax paying ability of the local districts. Under the formula even the wealthiest districts were reimbursed for at least 15% of their reimbursable expenditures. Reimbursable expenditures do not include vocational education, capital outlay and school lunch costs. The legislature underfunded Old Chapter 70 in all but two years of its operation. Under New Chapter 70 the state assumes a portion of the cost of each student's education based on the state's average as opposed to actual local operating expenditures. New Chapter 70 contains a "save harmless" clause which provides that before any money is distributed under the new formula, each local district is entitled to receive 107% of the aid that it received under Old Chapter 70 in FY 1978. Further, in FY 1979 all new state aid must be used for property tax relief and cannot be used to increase educational expenditures. Chapter 70 does not remedy the gross disparities in operating revenues available to districts resulting from the state's primary reliance on local property taxes to finance education.

Plaintiffs allege that the Massachusetts system of public school finance violates the state's Equal Protection Clauses—Part One, Articles I, VI and VII of the Declaration of Rights of the Massachusetts Constitution; the federal Equal Protection Clause of the 14th Amendment; and the Education Clause of the state constitution, Part Two, Chapter V, Section II which guarantees that educational opportunities will be disseminated generally among all students.

Status. The complaint was filed on May 9, 1978. Plaintiffs filed an amended complaint on December 1, 1978. Defendants' answer was filed on February 7, 1979. Preparation for trial is under way and a 1980 trial date is anticipated.

NEW YORK

Board of Education, Levittown v. Nyquist, 94 Misc. 2d 466, 408 N.Y.S.2d 606 (Nassau County Supreme Court 1978)

Parties. The original plaintiffs are boards of education and children from low property wealth districts from Long Island and Upstate New York. Subsequent to the filing of the complaint, the boards of education of three large cities, Rochester, New York City, and Buffalo, the City of New York, a New York City Parents' organization, and children from these cities intervened as plaintiffs. The State of New York, the Comptroller and the Commissioner of Taxation and Finance are defendants in the proceeding.

Description. The complaint of the original plaintiffs alleges that the New York State school finance system makes the allocation of educational resources a function of local real property wealth without any relationship to legitimate educational considerations in violation of the state constitution's equal protection and education provisions. The education article specifies that "the legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of the state may be educated."

The big city intervenors' complaint alleges that the state education aid formula (a) measures local fiscal capacity arbitrarily and inadequately, resulting in large urban school districts, rendered poorest in school finance resources because of greater municipal services burdens and school costs, being treated as wealthy and receiving less state aid than other districts with greater resources; and (b) in undertaking to grant special assistance to school districts for students requiring compensatory educational services, arbitrarily and inequitably grants less and inadequate aid per student in the largest urban districts having the highest concentrations of such students and the greatest need to provide compensatory school services.

Status. Original complaint and intervenors' complaint filed in 1974. Answer filed October 26, 1974. On April 9, 1976, the court denied defendants' motion for summary judgment on the ground that there were substantial contested issues of fact and therefore summary resolution of constitutional issues was inappropriate. The court also found that all plaintiffs had standing to bring the action and that the issue of the constitutionality of the state system of school finance pre-

sented a justiciable controversy. The court granted defendants' motion insofar as it challenged the suit being brought as a class action. On this point the court was of the opinion that class relief would be inappropriate and that those similarly situated would be entitled to comparable relief under principles of *stare decisis*.

A lengthy trial was completed in January, 1977. Post-trial briefs and proposed findings of fact and conclusions of law were submitted by the parties during the spring and summer of 1977. The court issued its decision holding the New York school finance system unconstitutional in June, 1978. With respect to the original plaintiffs, although the court did not find that education is a fundamental right under the state constitution, it did determine that whether the rational basis test or the sliding-scale test is applied, the system violates the state equal protection and education clauses. In addition the court held that the system's failure to compensate for municipal and educational overburdens creates a discriminatory classification with respect to the urban intervenors in violation of the state and federal equal protection clauses and the state education clause.

The decision has been appealed by defendants.

OKLAHOMA

Ford v. Winters (Oklahoma Supreme Court, No. 51150)

Parties. Plaintiffs were students and taxpayers residing in the Tulsa County Independent School District No. 3. Defendant was the State Treasurer.

Description. *In State ex rel. Poulos v. State Board of Equalization,* 552 P.2d 1134 (1975), the Oklahoma Supreme Court held state assessment ratios unconstitutional because they failed to equalize *ad valorem* assessments throughout the state. Plaintiffs in this case challenged the constitutionality of the state school aid formula on the ground that state aid is distributed on the basis of assessment ratios which suffer the same constitutional defects at issue in *Poulos*. The effect, plaintiffs charged, is that districts which have higher assessment ratios, such as Tulsa, receive less state aid than districts with lower assessed valuations. The resulting inequity is arbitrary and violates the due process and equal protection of the laws under Article

II, Section 7 of the state constitution. Plaintiffs also challenged the use of flat grants to LEAs for raises in teacher salaries because they are not dependent upon teacher-student ratios, work load, or the number of teachers in the district.

Status. The suit was filed in July, 1977, as an original action in the Oklahoma Supreme Court. The court declined jurisdiction instructing the plaintiffs to seek relief in the trial courts.

The Fair School Finance Council of Oklahoma, an organization consisting of over 30 property poor school districts, has been formed for the purpose of bringing about improvements in the present system of funding public school education. These school districts are contemplating filing a lawsuit to challenge the Oklahoma school financing scheme.

SOUTH DAKOTA

Oster v. Kneip (Hughes County Circuit Court)

Parties. The plaintiffs are school children who attend the Ethan School District in Davison County. The defendants are the Governor, Attorney General, State Treasurer, State Auditor, Commissioner of School and Public Lands, Secretary of the Department of Education and Cultural Affairs, Secretary of Revenue, Superintendent of Elementary and Secondary Education, and the State Board of Education and its members.

Description. The complaint alleges that South Dakota relies on local sources of revenue for 70% of its revenues for educational expenditures. Only 17% derives from the state. Plaintiffs contend that differences between districts in taxable property wealth result in expenditure disparities and, consequently, unequal educational opportunities for children depending upon where they reside.

South Dakota's Minimum Foundation Program (MFP) consists of an equalization aid component and a flat grant component known as General Support. Equalization aid is paid only if funds remain after General Support payments are distributed. General Support is paid to all districts regardless of property wealth. Equalization support is the amount that the cost of the Foundation Program exceeds the income

of the program in the previous year.

Plaintiffs allege that the MFP fails to ensure equal educational opportunity because not only is equalization aid a small proportion of the state program, but also the amount paid out in flat grants is subtracted from it. The result is that the MFP does little to reduce disparities in expenditures between districts. Plaintiffs allege that the system violates the "thorough and efficient" clause of Article VIII, Section 1, and the equal protection provisions of Article VI, Sections 1, 17, and 18 of the South Dakota constitution.

Status. The complaint was filed on December 26, 1977. The defendants' answer was filed on February 23, 1978. Due to the current financial crisis in the state, plaintiffs have not pressed the suit.

WEST VIRGINIA

Pauley v. Kelly, 255 S.E.2d 859 (Supreme Court of Appeals of West Virginia 1979)

Parties. Plaintiffs are children attending the public schools in Lincoln County, West Virginia. Defendants are the West Virginia State Board of Education, Superintendent of Schools, and the Treasurer of the State of West Virginia.

Description. This is an action for declaratory and injunctive relief to invalidate West Virginia's education finance statute under provisions of the state constitution. Plaintiffs contend that the statutory scheme fails to produce a "thorough and efficient" education mandated by Article XII, Section 1, and that it deprives the plaintiffs of equal protection of the laws.

Status. Plaintiffs' complaint was filed on February 10, 1975. On May 1, 1975, the State filed a motion to dismiss. In September, 1976, the plaintiffs filed a motion for summary judgment. This motion was supported by affidavits, defendants' admissions, and documents published by the State Department of Education and the North Central Association of Schools and Colleges, showing that Lincoln County's facilities, curricula, and other services did not meet minimum state standards, its pupils scored below the state and national average in every category on standardized tests, its absenteeism and withdrawal

rates were higher than those in schools located in counties with greater property wealth, and that there is a direct and significant relationship between expenditures for education and achievement.

On June 14, 1977, the circuit court entered a memorandum opinion granting the State's motion to dismiss. The court held that Article XII, Section 1 places a mandatory duty on the State to provide a "thorough and efficient" system of public schools and that the State can delegate the authority but not the responsibility to meet that duty. It held that the right to a "thorough and efficient" education is a fundamental right and that public schools must meet minimum standards of health and safety and provide students with basic educational opportunities to become enlightened and productive citizens. The court found that Lincoln County is not providing these basics and that the school system falls short of the constitutional mandate. But the court refused to attribute this condition to the system of financing. The court also rejected the plaintiffs' equal protection claims.

The dismissal of plaintiffs' complaint was based on the court's understanding of the "doctrine of least obtrusive remedy" under which courts will not hold legislation unconstitutional if there is a less drastic way to remedy the problem. The court suggested that the State should give supplemental funding to Lincoln County to satisfy the "thorough and efficient" standard.

On February 13, 1979, the West Virginia Supreme Court reversed the trial court's dismissal of plaintiffs' complaint. In sustaining plaintiffs' complaint the court held that education is a fundamental interest for purposes of equal protection analysis and that legislative classifications creating educational inequities should be strictly scrutinized to determine whether any compelling state interest justifies them. In sustaining plaintiffs' claim under the "thorough and efficient" requirement, the court made an exhaustive review of other states' constitutional conventions and cases interpreting "thorough and efficient" and attempted to define the elements, outcomes and kinds of services included in the constitutional mandate. The court held that these terms evidence an intention of the constitutional framers to mandate a system of "high quality educational standards." The court anticipated that plaintiffs at trial will prove that the finance system is constitutionally deficient under any thorough and efficient standard adopted.

Going beyond the confines of plaintiffs' complaint, the court im-

posed a burden on plaintiffs to show that the failure to provide a constitutional system is not the result of inefficiency or the failure of state and local officials to follow existing statutes pertaining to education and the assessment of property. With this guidance, the Supreme Court remanded the case for trial.

Preparation for trial is under way.

WISCONSIN

Kukor v. Thompson, Docket No. 79-CV-5252 (Dane County Circuit Court)

Parties. The plaintiffs include the Board of School Directors of Milwaukee and its members, the City, the Mayor, Aldermen, school children enrolled in public school in the Milwaukee School District and parents of these children as taxpayers. They represent a class of all children, parents and citizens in the District. The defendants include the Wisconsin Department of Public Instruction and its Superintendent, the Department of Revenue and its Secretary, and the Treasurer of the State.

Description. This suit seeks a declaratory judgment that the means of financing education in Wisconsin violates Article X, Section 3 of the state constitution which requires the legislature to provide "for the establishment of district schools, which shall be as nearly uniform as practicable"; the equal protection clause of the 14th Amendment; and the equal protection guarantee of the state constitution, Article I, Section 1. The suit attacks the State's general aid formula which determines need according to per pupil property tax wealth for its failure to take into account (1) the burden borne by the city's real property tax base caused by greater non-educational governmental expenditures which are necessary in an urban environment; (2) the higher cost of providing a constitutionally adequate education in large urban areas; and (3) the heavier concentration of disadvantaged pupils in urban school districts.

Status. The complaint was filed on October 15, 1979. The defendants filed their answer on November 30, 1979.

WYOMING

Washakie County School District No. 1 v. Herschler, No. 5145, ____ P.2d ____ (S. Ct. Wyoming, January 15, 1980)

Parties. The plaintiffs are three property poor school districts, school board members of these districts suing in their official capacity and as taxpayers and parents, and children attending school in one district. The defendants are the Governor of Wyoming, the State Treasurer, the State Superintendent of Public Instruction, members of the State Board of Education and the eight richest school districts in Wyoming.

Description. This is a *Serrano*-type suit based upon the equal protection, tax uniformity and education provisions of the Wyoming Constitution. The education provisions require the State to establish and maintain a "complete and uniform" system of public instruction. Wyoming financed public education with heavy reliance upon local *ad valorem* property taxation. In addition the State had a Foundation Program which represented approximately 30% of total school funds, designed to guarantee a minimum education for every child by providing state financial assistance in inverse proportion to the tax paying ability of the local school districts.

Status. Plaintiffs' complaint was filed on June 20, 1978. In August, 1978, defendants filed numerous motions to dismiss. The district court entered its order dismissing the complaint on May 4, 1979.

On January 15, 1980, the Supreme Court of Wyoming reversed the dismissal and held Wyoming's system of school finance unconstitutional. The court did so without a trial on the authority of its earlier decision in *Sweetwater County Planning Comm. v. Hinckle,* Wyo., 491 P.2d 1234 (1971) and by taking judicial notice of the state financing scheme. In light of the numerous references to education in the constitution, the court declared education a fundamental interest and the distribution of funds on the basis of the wealth of individual school districts suspect.

The Court remanded the case to the district court with directions to vacate its order of dismissal and retain jurisdiction until the legislature enacts a constitutional body of law, which process is to be under way no later than July 1, 1982.

TERMINATED

ALASKA

Tobeluk v. Lind, No. 72-2450 (Alaska Superior Court, 3rd Judicial District). *On Remand From Hootch v. Alaska State-Operated School System,* 536 P.2d 793 (Alaska Supreme Court 1975)

Parties. Plaintiffs are Alaska native (Eskimo, Indian, and Aleut) children of secondary school age. Because the state does not maintain any secondary school facilities in their communities, in order to attend grades 9-12 the plaintiffs must leave their homes and families for nine months each year in order to participate in boarding programs. Defendants are the State Commissioner of Education and members of the State Board of Education. The plaintiffs represent a class of 2,663 Alaskan native children of secondary school age who reside in some 126 communities which do not offer secondary schooling.

Description. In 1975, the Alaska Supreme Court rejected claims by Eskimo, Indian, and Aleut school children that the lack of secondary schools in primarily non-white communities, forcing them to leave home for nine months of the year to attend boarding schools, violated constitutional and statutory provisions guaranteeing the right to a public education. *Hootch v. Alaska State-Operated School System,* 536 P.2d 793 (Alaska 1975). The case was remanded to the trial court for consideration of additional claims made by the plaintiffs that the lack of availability of secondary schools for their class was discrimination based on race, prohibited by the equal protection clauses of the state and federal constitutions.

An agreed statement of facts submitted in the case described the historical development of a system of segregated schools in Alaska which was officially sanctioned by the United States Congress. In recent times, native Alaskan youths who wish to attend secondary schools have the option of leaving home to attend boarding schools within Alaska or in other states or participating in correspondence courses. The correspondence study program proved to be ineffective for most children enrolled in the program. This was primarily due to the fact that successful completion of correspondence courses is largely dependent upon parental interest and supervision, and most village parents have not had sufficient formal education to supervise

such courses effectively. Deficiencies of the boarding school program included "accelerated dropout rates, psychological and social problems including disruption of family life and loss of sense of identity, and failure to live up to educational potential."

Status. On September 13, 1976, the parties to this litigation entered into a consent decree settling the lawsuit. Under the terms of the agreement, each of 126 communities is to be afforded the opportunity to have its own secondary school program. The governing body of the appropriate school district was to notify the residents of the community of their entitlement to a public school by November 1, 1976. By June 1, 1977, surveys of secondary children not presently in school were to be completed. Communities which had suitable facilities in which to conduct a local secondary school were to establish one as soon as practicable, with classes commencing no later than Fall 1977. Communities in which existing structures could be temporarily rendered suitable at a cost not exceeding $10,000 were to undertake renovation as soon as practicable. Provision was also made for the construction of new facilities in communities where no suitable facilities presently exist. Certain of the 126 communities were designated as major construction sites in which comprehensive secondary educational facilities are being built using the rural secondary school construction funds provided by the legislature.

The consent degree also provided for monitoring of progress by the plaintiffs and by periodic reports to the court. The court has retained jurisdiction of the action until such time as the construction provided for by the agreement has been substantially completed at each of the sites and other provisions of the decree have been substantially fulfilled.

As of the 1979-80 school year, 96 villages had secondary education programs. To date $125 million have been allocated to construct secondary schools in rural villages. The legislature currently has before it an additional $8 million bond issue. According to the plaintiffs, the total of $133 million should be sufficient to achieve compliance with the decree.

Plaintiffs have raised, as a critical area of noncompliance, defendants' failure to enforce a regulation recited in the consent decree which provides for the participation of village residents in the program planning and evaluation of the new schools. Negotiations are in pro-

gress and plaintiffs cite the possibility of contempt proceedings, should the issue not be resolved satisfactorily.

ARIZONA

Hollins v. Shofstall, 110 Ariz. 88, 515 P.2d 590(1973)

Parties. Plaintiffs were public school students and their taxpaying parents from Maricopa County, Arizona. Defendants were the Superintendent of the Arizona Department of Education, the Arizona Board of Education, the Treasurer and Attorney General of Arizona, and the Superintendent of the Maricopa Public Schools.

Status. Plaintiffs filed a *Serrano*-type complaint on October 12, 1971, in the Arizona Superior Court for Maricopa County. Nine months later, on June 1, 1972, the trial court granted a summary judgment for the taxpayer plaintiffs on the grounds that the system of school financing unconstitutionally discriminated against them under the state and federal equal protection clauses. As for the student plaintiffs, the trial court found that they had suffered no unconstitutional injury or inequality in their right to an education and therefore denied their motion for summary judgment. It did, however, order that its declaratory judgment with respect to the taxpayers' claim would not take effect until and after the close of the thirty-first (31st) legislature in 1974. Subsequently, the Arizona legislature repealed its entire school financing statutory framework effective July 1, 1974 (laws 1973, Chapter 182, § 13). On November 2, 1973, the Arizona Supreme Court reversed the trial court's order and remanded the case for further proceedings. In its decision, the State Supreme Court did hold that the Arizona "Constitution does establish education as a fundamental right of pupils between the ages of 6 and 21 years." Notwithstanding the fundamentality of education, the court held that the applicable standard to judge the constitutionality of the Arizona system of school finance was whether it had a "rational and reasonable basis. . .which meets the educational mandates of the /Arizona/ constitution. . . ." It held that the Arizona school finance system did meet the standard and despite the fact that taxpayers in some municipalities had a greater tax burden than taxpayers of others, with respect to the constitutional claims of the taxpayers, the court could find "no magic in the fact that the school district taxes herein complained of are greater in some districts than others." /515 P.2d 590 (1973)/.

FLORIDA

District School Board of Bay County Florida v. Department of Education, No. 73-1747 (Leon County Circuit Court) (final consent judgment, June 2, 1977)

Parties. The plaintiffs were 44 school districts bringing suit against various officials of the State Department of Education.

Description. This case arose out of the inclusion of a cost of living differential in the state program for providing equalization aid to school districts. The plaintiff school districts claimed that the factors used in determining the cost of living differential by counties are inadequate and violate the uniformity provision of the state constitution. It is important to note that this suit did not attack the concept of a cost of living differential. This suit attacked only the factors that were applied the first year and plaintiffs sought to be indemnified for lost revenues by the State or by other school districts that benefited by the cost differential.

Status. Subsequent to the filing of this suit, the legislature provided a different set of factors to be used in the equation. The state filed a motion to dismiss for mootness. The trial court refused to dismiss the complaint and the State took an interlocutory appeal to the Florida Supreme Court. That court denied jurisdiction over the interlocutory appeal. Subsequently, the Circuit Court of Appeals also declined jurisdiction.

On June 2, 1977, a final consent judgment was entered and the case was dismissed. The consent judgment primarily concerned recommendations and requirements pertaining to the use of cost differentials among school districts for the distribution of state equalization aid. The court commended cost of living differentials as moving in the direction of a more "uniform system of free public schools" as required by Article IX, Section 1 of the Florida Constitution. The judgment, however, criticized the use of cost of living differentials, appropriate for the adjustment of personnel salary costs, for the creation of non-salary educational cost differentials among districts. The judgment required the use of non-salary educational cost differentials as soon as they are identified. The court agreed that cost of living adjustments were proper for creating salary cost differentials, but recommended that price surveys performed to create cost indices take

into account extra costs resulting from the unavailability of specific goods and services locally in certain areas. The court was also of the view that price surveys should be conducted in each county at least once every three years.

IDAHO

Thompson v. Engelking, 96 Ida. 793, 537 P.2d 635 (Idaho Supreme Court 1975)

Parties. Plaintiffs were school children and their taxpaying parents who reside in the Pocatello School District No. 25. Defendants were the State Superintendent of Public Instruction, the members of the State Board of Education, the State Auditor and the State Treasurer. Additionally, several local elected officials were defendants including the Auditor, Treasurer and Assessor for several counties throughout the State.

Description. This was a *Serrano*-type suit based upon the equal protection and education provisions of the Idaho Constitution. This latter constitutional provision requires the State to "establish and maintain a general, uniform and thorough system of public, free, common schools for all the children in the state. . . ."

Status. During the summer of 1973 the case was tried based upon stipulated facts and procedures. On Novemer 16, 1973, the trial court issued a written opinion declaring Idaho's school financing system to be unconstitutional in that it "does not provide for a uniform system of public schools as required by /the state constitution/."

On appeal, the Idaho Supreme Court in a 3-2 decision rejected a claim that its education finance law violates Article 9, Section 1 of its Constitution which requires the State to provide a "uniform system" of public schools. In upholding the statute, the court reversed the judgment of the trial court which had held the statute unconstitutional on this ground. The court also refused to recognize education as a fundamental interest and turned back an equal protection attack as well. The two dissenting justices considered education a "fundamental interest" because of its special place in the Idaho Constitution and would have found the wealth related inequalities among districts in

violation of the State equal protection provision.

ILLINOIS

Blase v. State of Illinois, 55 Ill.2d 94, 302 N.E.2d 46 (1973); Action to require the State of Illinois to provide not less than 50% of the funds needed to operate and maintain public elementary and secondary schools.

Parties. Plaintiff in the first of these consolidated actions (*Blase v. Martwick*) was a taxpayer and parent of public school children suing on behalf of the class of all those similarly situated. Defendants were the State of Illinois, the State Superintendent of Public Instruction, the school district where the plaintiff and daughter reside and the Cook County Superintendent of Schools.

Plaintiff in the second action *(Sbarboro v. State of Illinois)* was a taxpayer and resident of Chicago. Defendants were the State of Illinois and State Superintendent of Public Instruction.

Description. Plaintiffs contended that Section 1 of Article X of the Illinois Constitution which reads: "The State has the primary responsibility for financing the system of public education" required the State to provide not less than 50% of the funds needed to operate and maintain the State's public elementary and secondary schools. They asked the court to declare invalid the State's school finance system since it did not provide the requisite 50% of the costs of education throughout the State. In a brief *amicus curiae* in support of the plaintiffs the Chicago Region, Parent Teachers Association asked the court to decide the case without limiting the power of the judiciary to deal with other constitutional claims, not then before it, respecting the provision of public education (i.e., potential cases dealing with the requirement that the State provide "an efficient system of high quality educational institutions and services" (Article X, Section 1)).

Status. The *Blase* case was filed on September 1, 1971, and the *Sbarboro* case on October 5, 1971. The Superintendent of Cook County, originally a defendant in the *Blase* case, brought suit in January 1972 in the Circuit Court of Cook County *(Martwick v. Illinois,* No. 72-CH-297*)* on basically the same theory as the plaintiffs in *Blase* and *Sbarboro*. The *Martwick* case was removed to the U.S. Dis-

trict Court in October 1972 (N.D. Ill. No. 72-C-436) and was ultimately dismissed voluntarily by the plaintiff after remand to the state court and realignment of *Martwick* as a plaintiff in *Blase*.

On June 7, 1972, the trial judge granted the defendants' motion for summary judgment and dismissed the consolidated complaints. The plaintiffs then appealed to the Supreme Court of Illinois. On September 25, 1973, the Illinois Supreme Court held for the defendants in an opinion that was focused narrowly on the language of the specific constitutional provision under consideration. It held that in view of the history of the provision and the intent of its sponsors, it was meant, not to impose a specific obligation on the legislature, but to articulate a goal of the State to assume primary responsibility for financing public education.

ILLINOIS

People of the State of Illinois ex rel. Jones v. Adams, 350 N.E.2d 76 (Ill. App. 1976)

Parties. Defendants, who in the context of this case were those attacking the state taxation and school finance provisions, were landowners and parents of school-aged children in Franklin County, Illinois, who paid their property taxes in 1971 and 1972 under protest. The plaintiff was the County Treasurer.

Description. The defendants, who were mostly farmers, paid their property taxes for 1971 and 1972 under protest, arguing that the system of assessing property taxes discriminated against farmers as a class in violation of the equal protection of the laws. Their claims were based on a state constitutional provision that permits counties with a population greater than 200,000, but not others, to classify real property for purposes of taxation; the use of property tax multipliers for successive years without adjustment; and the failure of the tax system to take income into consideration. Finally, they contended that, because the method of financing schools depended to a large extent on local revenues derived from the real estate tax, children in poor school districts were deprived of equal protection of the laws.

Status. On July 9, 1976, the Illinois Appellate Court rejected the defendants' claims and affirmed a lower court ruling in the state's

favor. With respect to the first three contentions, the court found a rational basis to support the population requirement for property classification and the method of calculating real estate taxes based on the assessed value of land regardless of income. The court further held that the defendants had failed to demonstrate that they were in fact injured by use of the property tax multipliers.

The final argument was a direct assault on Illinois' foundation program for funding public education. Since the law had been amended in 1973 to provide a greater proportion of state funding, the court considered defendants' claim only with respect to 1971 and 1972. The Court's opinion is noteworthy for its expansive reading of *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

The Court noted that *Rodriguez* had displaced *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. E.D. 1968), *aff'd. sub nom. McInnis v. Ogilvie*, 394 U.S. 322 (1969) as the relevant authority. The Court interpreted *Rodriguez* as applying an intermediate standard of review, between minimum rationality and strict scrutiny. Under this standard, even though local control of public schools justifies reliance on local property taxes to fund the public schools, reliance on district property wealth could be invidiously discriminatory depending upon the adequacy of the education provided and the size of disparity in per pupil expenditures between school districts in the state. The Court concluded that under *Rodriguez* a state's method of financing public education "might deny children in especially poor school districts the equal protection of the laws, and yet might be constitutional with respect to children in other school districts." *Id.* 776. Nevertheless, applying this standard to the facts before it, the Illinois Court found that the defendants had failed to meet their burden of proof by failing to introduce evidence concerning the adequacy of education and the size of the disparity in per-pupil expenditures between school districts in 1971 and 1972.

KANSAS

Unified School District No. 229 v. State of Kansas, No. 132851 (District Court of Shawnee County, Kansas)

Parties. Plaintiffs were five unified school districts, and individual members of a unified school district, as property owners and tax-

payers. Defendants were the Attorney General of Kansas, the Commissioner of Education, the State Treasurer, and members of the State Board of Education.

Description. On December 20, 1976, the plaintiffs filed a declaratory judgment action challenging several provisions of the Kansas School District Equalization Act as violating Article VI of the state constitution and Sections 1 and 2 of the Kansas Bill of Rights. Among the features of the Act alleged to be unconstitutional were (1) the use of taxable income as a factor in apportioning general state aid to districts; (2) an income rebate provision because it excludes income earned in another state from a general 20% rebate of Kansas income tax liability of school district residents; (3) categorical aid for pupil transportation; (4) flat grants for special education services; (5) the lack of any state aid for voc-ed programs; (6) the lack of state aid for social security; (7) the deduction of impact aid from general state aid entitlements; (8) and statutory limitations on district budgeting. Plaintiffs contended that the effect of these provisions was to create a school finance system which was "wealth related" and therefore not "fiscally neutral" as required by the relevant provisions of the state constitution. Plaintiffs sought a declaratory judgment that the statutory provisions for distribution of state education aid were unconstitutional and an order retaining jurisdiction while the defendants took steps to restructure the financial scheme so as to assure equal educational opportunity among the unified school districts of the state.

Status. The complaint was filed on December 20, 1976. The defendants filed their answer on December 29, 1976. Subsequently legislation was enacted substantially changing the school finance system and the case was dismissed.

LOUISIANA

Horne and the Jefferson Parish School Board v. Louisiana State Board of Education, et al., 357 So.2d 1216 (1978), *writ den.*, 359 So.2d 621 (Supreme Court of Louisiana 1978)

Parties. Plaintiff Horne was a citizen and taxpayer in Jefferson Parish who had minor children attending school in the Jefferson Parish school system. The Jefferson Parish School Board is a political subdivision of the State of Louisiana responsible for maintaining a free public school system under state law. Defendants were the Louisiana State Board of Elementary and Secondary Education and its

individual members, the State Treasurer, State Comptroller, and the Louisiana School Board Association. The Orleans Parish School Board and the Caddo Parish School Board were permitted to intervene.

Description. Under Louisiana's Minimum Foundation Program, the cost of operation of each parish and city school system is first calculated. In the past, the amount of state aid was calculated by subtracting from this figure the net proceeds collected locally by imposition of a 5-mill property tax required by Article VIII, Section 13(c)(1) of the state constitution. Beginning in FY 1976-1977, based on a property tax ratio study, the state began to use an equalized assessment basis to determine the amount of the local contribution rather than the actual amount collected by the 5-mill tax. Plaintiffs contended that the property tax ratio study was defective, the formula for distribution was necessarily arbitrary and capricious, and the state MFP funds were not "equitably distributed" as required by Article I, Section 3 and Article VIII, Section 13B of the 1974 Louisiana constitution. The result, plaintiffs alleged, is a severe monetary loss to 44 local school districts. They urged a return to the old system whereby the MFP was based upon actual proceeds collected under the 5-mill tax. Alternatively, they argued that any shortage of funds appropriated by the legislature should be borne equally by all school systems on a pro rata basis irrespective of the amount of funds realized by a local system from the 5-mill tax.

Intervenor Orleans Parish School Board argued that the legislature had appropriated insufficient funds to implement the MFP, thereby denying a basic program of education to all children, and that the legislature had adopted a means of prorating these funds among districts that was arbitrary and capricious. Intervenor asked the court to enjoin the defendants from dispensing funds under the formula. Alternatively, OPSB urged the court to invalidate certain aspects of the scheme to eliminate certain deductions from the support program.

Status. Plaintiffs' complaint was filed on December 3, 1976. On July 14, 1977, the trial court ruled against the plaintiffs on the merits. The First Circuit Court of Appeals dismissed plaintiffs' appeal on March 20, 1978 as moot. The court's dismissal was based on the following: (1) the funds to be distributed pursuant to the formula under attack for FY 1976-77 were all disbursed; (2) the taxing scheme for FY 1977-78 was not finalized as of the time of the appeal; and (3) even if the MFP formula for 1977-78 had been approved, the 1977-78

formula was not part of the lawsuit. Plaintiffs' petition for rehearing was denied and on June 9, 1978, plaintiffs' writ to the Supreme Court of Louisiana was denied.

LOUISIANA

Scarnato v. Parker, 415 F. Supp. 272 (D.La. 1976), *aff'd.*, 430 U.S. 961 (1977)

Parties. Plaintiffs were children attending elementary and secondary schools in Louisiana. Defendants were the Treasurer of the State of Louisiana, the State Board of Elementary and Secondary Education and its individual members, the State Comptroller and the State Superintendent of Public Education.

Description. This was a suit for declaratory and injunctive relief to hold Louisiana's Minimum Foundation Program unconstitutional under the equal protection clause of the 14th Amendment to the federal Constitution. Unlike most states, Louisiana's constitution specifically requires the legislature to establish a Minimum Foundation Program and to ensure that the funds allocated are equitably distributed to parish and city school systems. School districts are also required to support public education by levying an *ad valorem* property tax not to exceed 5 mills (except Orleans Parish, which can levy up to 13 mills). The amount of equalization aid is the difference between the total cost of a district's program and the amount raised by the 5 mill levy. The gravamen of plaintiffs' complaint was that, since assessments are not uniform, the application of a standard millage rate penalizes those districts using a high assessment rate. They also claimed that the system established by the legislature violates Article VIII, Section 13(b) of the state constitution which requires an equitable allotment of the funds.

Status. On June 15, 1976, the three-judge federal court entered summary judgment for the defendants, thereby dismissing the suit. The court noted the absence of any evidence that the program discriminates against any definable category of poor people or results in the absolute deprivation of minimum foundation education to any class. The court next observed that, even if all property were assessed on a uniform basis, differences would still result based on variations in local property wealth. The court held that the alleged defect in Lou-

isiana's program was not dissimilar from the wealth-related disparities held not to violate the equal protection clause in the *Rodriguez* case. The court also stressed that because of legislative changes, the relief sought would only affect one year's appropriation and therefore was not of a continuing nature.

Finally, the court dismissed the pendent claim asserted under the Louisiana constitution. Although not clear from the court's opinion, it appears that this was an application of the abstention doctrine relegating the parties to the state courts for the resolution of this question.

On April 18, 1977, the U.S. Supreme Court summarily affirmed the decision of the lower court.

MAINE

Boothbay v. Longley, Docket No. 75-918 (Kennebec Superior Court)

Parties. Plaintiffs were coastal towns, elected officials, school children, residents, taxpayers, and property owners. Defendants were the Governor of Maine, Commissioner of Education and Cultural Services, State Board of Education, State Tax Assessor, Treasurer, Attorney General, and the Director of the State Bureau of the Budget.

Description. The suit challenged the School Finance Act of 1975, which imposed a statewide property tax to finance public education as violating the United States and Maine constitutions. The law required that all administrative units tax property at a uniform rate and pay the revenues into the state treasury. The sums were then redistributed to the administrative units in a manner designed to equalize per-pupil expenditures. A number of coastal towns voted not to raise revenues required by the law and filed suit for declaratory and injunctive relief.

Status. Complaint filed July 18, 1975. Answer filed July 22, 1975. A temporary restraining order was granted to the state July 23, 1975, requiring that the plaintiff towns not interfere with the collection of the Uniform School Tax as required by law and directing the plaintiffs to pay their respective shares of the taxes. On August 17, 1975, the state moved to cite the plaintiffs for contempt for noncompliance. Under this threat, the plaintiffs came into compliance.

In November, 1977, after briefs were filed in the Maine Supreme Judicial Court, the statewide property tax aspect of the school finance system was repealed by referendum. The case was subsequently dismissed as moot. Two related cases were dismissed for lack of prosecution. In 1978 the state legislature enacted a new school finance system containing a high foundation aid level.

MISSOURI

Benson v. Missouri, Docket No. 27911 (Circuit Court Cole County)

Parties. The plaintiffs were the members of the Board of Education of the City of St. Louis suing in their official capacities and individually as taxpayers and as the parents of children attending the elementary and secondary schools. The defendants were the State of Missouri, the Attorney General, the Missouri State Board of Education and the Commissioner of Education.

Description. The complaint sought declaratory and injunctive relief against the operation of the Missouri Foundation Plan for financing education. The complaint also alleged that the state program failed to take into consideration "municipal overburden" in allocating funds and that by basing the amount of state aid on Average Daily Attendance it discriminated against urban schools which have a higher rate of absenteeism. Plaintiffs' claims were based on various provisions of the Missouri Constitution including Article IX, Section 1(a) requiring the General Assembly to establish and maintain free public schools for the gratuitous instruction of all persons in the State under 21 years of age. Article IX, Section 1(a) recognizes that "A general diffusion of knowledge and intelligence (is) essential to the rights and liberties of the people."

Status. The complaint was filed September, 1975. Defendants on October 3, 1975, filed motions to drop the State of Missouri as a party defendant, for a more definite statement, and to strike the portions of plaintiffs' prayer for relief requesting the reallocation of funds. These motions were not ruled on. Following reform legislation, the case was dismissed voluntarily by the school board.

MONTANA

State ex rel. Woodahl v. Straub, 164 Mt. 141, 520 P.2d 776 (Montana Supreme Court 1974)

Parties. Plaintiffs in this original proceeding before the Montana Supreme Court were the Montana Attorney General and Department of Revenue. Defendants were county officials in a property rich county.

Description. Plaintiffs, in an original action in the Montana Supreme Court, sought a ruling on the constitutionality of recently passed school finance legislation which required counties raising more than the amount needed to fund the "foundation program" with a 40-mill property tax levy to pay over the excess to the State for redistribution to counties which raise less than the foundation amount with a 40-mill levy. This action was precipitated by the refusal of defendants, county officials, to pay over to the State the amount required by this provision. The court characterized the 40-mill levy as a statewide property tax. It held that the legislature had the power to levy such a tax and to use the proceeds for any public purpose including to fulfill its constitutional duty to fund public education. The court rejected the argument that the tax discriminates against the taxpayers of the property rich counties on the grounds that all taxpayers were taxed at the same rate, that the State as a whole benefited and that it was no defense to the collection of the tax that certain counties did not receive benefits directly in the amount of their contribution.

NEW JERSEY

Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973)

Parties. Plaintiffs included the Mayors, members of the City Councils and Board of Education for five property poor New Jersey cities. Also included as plaintiffs were a student and a taxpayer from a New Jersey city school district. The defendants were the Governor, Treasurer, Attorney General, Commissioner of Education, and both houses of the State Legislature, and their leaders.

Description. Plaintiffs charged in a sixteen count complaint that the New Jersey system of public school finance was unconstitutional

for the following reasons:

It makes the quality of education dependent on the wealth of each district and not the state;

It places an unequal burden on property tax owners who live in low property tax value districts;

The public officials in these poor districts are unable to provide equal educational opportunities;

The minimum educational needs of the students in these districts are not being met;

The delegation to these districts to run schools was done without adequate standards;

The schools are not being maintained thoroughly and efficiently as required by the state constitution;

School district boundaries deprive plaintiffs of the power to spend what they want on education; and finally,

The current system promotes racial discrimination.

Plaintiffs asked the court, *inter alia*, to declare the current educational finance scheme unconstitutional and to order the defendants to restructure the scheme in a manner not violative of the United States and New Jersey constitutions. Further, plaintiffs asked the court to order the defendants to change the boundary lines of the districts in a way that would equalize the amount of tax base per student and that would eliminate the complained of discrimination.

Finally, the plaintiffs asked the court to declare the state's real property tax unconstitutional to the extent that it is used for public school support and to direct the defendants to enact laws equalizing those taxes on a state-wide basis.

Status. The suit was filed in the Superior Court of Hudson County, New Jersey, in early 1970. A trial was held in late 1971, and on January 19, 1972, the court held that the New Jersey school finance system violated the education clause of the state constitution, the pro-

vision requiring uniformity of taxation, and the equal protection provisions of the state and federal constitutions (118 N.J. Super. 223, 287 A.2d 187 (1972)).

On appeal to the New Jersey Supreme Court, the decision was affirmed on the basis that the New Jersey school finance system violates the state's constitutional mandate to provide a "thorough and efficient" education (62 N.J. 473, 303 A.2d 273 (1973)). The Court found that the state had failed to define in some discernible way the state's obligation to provide a thorough and efficient education and to insure that all children had an equal opportunity to obtain such an education. The court specified in general terms the standard for determining whether the constitutional obligation has been met: "The Constitution's guarantee must be understood to embrace that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market" (303 A.2d 273).

On June 19, 1973, in a supplemental opinion, the state was given until December 31, 1974 to establish reforms (63 N.J. 196, 306 A.2d 65). When the deadline passed without affirmative legislative action, the plaintiffs returned to the New Jersey Supreme Court and requested equitable relief against the state legislature. By order dated January 23, 1975, the court declined to order coercive relief but scheduled oral arguments on the question of its power to do so (67 N.J. 35, 335 A.2d 6). On May 23, 1975, having heard arguments, the court ordered provisional relief for the 1976-77 school year (67 N.J. 333 (1975), 339 A.2d 193). Under the court's order, in the absence of legislative initiative by October 1975, Minimum Support Aid and Save-Harmless Funds would be enjoined and those funds disbursed in accordance with the incentive equalization formula of the 1970 Act.

In the face of the Supreme Court's order, the Legislature passed and the Governor signed into law (September 29, 1975) S.1516, the Public School Education Act of 1975. Plaintiffs filed objections to the plan with the court on the grounds that: (1) it fails to define the term "thorough and efficient" in a comprehensible manner as required by the court; (2) the Legislature has not funded the act; and (3) assuming the act is funded, it would operate to preserve the inequalities between wealthy suburban school districts and disadvantaged urban districts.

On January 30, 1976, a divided New Jersey Supreme Court held S.1516 constitutional on its face, if fully funded (69 N.J. 449, 335 A.2d 129). The court left open the question of whether the Act, in actual operation, was constitutional until it had the benefit of actual experience.

Subsequent to the January 30, 1976 opinion, the Governor suggested to the court that the legislature would not fully fund S.1516 for the next school year. As a result the New Jersey Supreme Court in February 1976 issued an order to show cause why certain remedies should not be ordered in the event of legislative failure to assure full funding. After a further hearing the Supreme Court on May 13, 1976, enjoined all state and local officials "from expending any funds /with certain exceptions/ for the support of any free public schools" effective July 1, unless by that date the legislature acted to fully fund S.1516 for school year 1976-77 (70 N.J. 155, 358 A.2d 457).

As of July 1, 1976, the legislature had failed to assure full funding thus triggering the court's injunction. Less than two weeks thereafter, with the schools closed, the legislature enacted an income tax, assuring full funding of S.1516, and the injunction was lifted.

OHIO

Board of Education of the City School District of Cincinnati v. Walter, 58 Ohio St.2d 368, 390 N.E.2d 813 (1979); *rehearing denied,* ____ Ohio St.2d ____, ____ N.E.2d ____, *cert. denied,* ____ U.S. ____ (January 7, 1980)

Parties. The plaintiffs were the Cincinnati Board of Education, board members, the district's Superintendent and Clerk-Treasurer and parents and property owners and their children who attend the Cincinnati public schools. The suit was brought as a class action on behalf of all officials and individuals similarly interested. The defendants were the State Superintendent of Public Instruction, the State Board of Education, the Department of Education and the Controlling Board.

Description. Plaintiffs alleged that the existing statutory system of public school finance places upon each school district in Ohio the burden of raising an excessive portion of the current operating funds

required to meet constitutional mandates and statutory duties through the locally levied property tax. The funds from the property tax and School Finance Program are inadequate for the Cincinnati School District and other districts to comply with unconstitutional and statutory requirements. The system makes the funds available for the education of the children in each school district dependent, to a predominant extent, upon the willingness of the voters in that district to approve school tax operating levies, rather than upon the cost of providing a thorough and efficient education to the students in such school districts or the availability of total funds from all sources of revenue within the constitutional reach of the General Assembly. In districts such as Cincinnati, experience demonstrates that the voters will not approve a property tax levy for the schools, resulting in unequal educational opportunities for the children in those districts. In addition, the State aid system, which uses taxable property value as the sole measure of fiscal capacity, discriminates against children in Cincinnati and similarly situated districts because it fails to take into account (i) the greater non-educational governmental expenditures and tax burden borne by the property tax base in such school districts, (ii) the higher costs of providing a thorough and efficient education in such districts and (iii) the heavier concentration of disadvantaged pupils in such school districts. Plaintiffs also challenged the fiscal penalty, in the form of reduced state aid, imposed by the state for a district's inability to satisfy state mandated educational standards. Plaintiffs alleged that these violate the following provisions of the Ohio Constitution: Article VI, Section 2 which requires the General Assembly to "make such provision, by taxation, or otherwise, as will secure a thorough and efficient system of common schools throughout the state. . ."; Article VI, Section 3 which requires that "Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds. . ."; and the equal protection provisions of Article I, Section 2 and Article II, Section 26.

Status. Plaintiffs' complaint was filed on April 5, 1976. The trial court denied defendants' motion to dismiss; and the trial commenced on December 6, 1976. On December 5, 1977, the Hamilton County Court of Common Pleas entered a declaratory judgment in the plaintiffs' favor, holding the public school financing system unconstitutional. The judgment order was accompanied by 389 pages of findings of fact and conclusions of law.

The court held that the statutory system established by the General Assembly to finance public elementary and secondary education deprives the plaintiff class of schoolchildren of the right to attend school in a "thorough and efficient" system of common schools under Article VI, Section 2 and violates the equal protection of the laws under the Article I, Section 2 of the Ohio constitution. The court also found that the system impairs the discharge of oaths taken by the plaintiff school board members in the low-wealth districts where the plaintiffs attend school and also forces them to violate statutory duties to provide for the education of the children within the district.

On September 5, 1978, the Court of Appeals for Hamilton County affirmed the trial court's equal protection finding and reversed its finding that the system violates the "thorough and efficient" clause. 10 Ohio Ops. 3d 26. Both parties appealed.

On June 13, 1979, the Ohio Supreme Court upheld the constitutionality of the Ohio school finance system. In its equal protection analysis the court refused to apply strict scrutiny, finding that education is not a fundamental interest. It applied instead the minimal rational relationship test and adopted defendants' position that local control is a rational basis supporting the finance system. In addition, the supreme court held that it should exercise great circumspection in reviewing whether the Ohio system is "thorough and efficient" in recognition of the deference to be provided to the General Assembly in education matters. Predictably the court upheld the system finding that educational opportunity has not been absolutely denied.

OHIO

State of Ohio ex rel. Akron Education Association v. Essex, 47 Ohio St.2d 47, 351 N.E.2d 118 (Ohio Supreme Court 1976)

Parties. The plaintiffs were three individuals who were members of the Akron Education Association. Defendants were the State Superintendent of Instruction and the Tax Commissioner.

Description. In 1975, Ohio enacted finance reform legislation to replace its foundation program. The new act created a two-tiered guaranteed tax base program which provided equalization aid for 95% of the school districts in the state. Governor Rhodes vetoed

seven line items of the act including provisions for minimum teachers' salaries and staffing requirements and for the establishment of an urban education pilot project. Plaintiffs brought an original action for mandamus in the Ohio Supreme Court claiming that the Governor lacks constitutional authority to partially veto the bill, because such action is limited to appropriation measures.

Status. On October 21, the defendants filed a motion to dismiss on the ground that mandamus jurisdiction does not lie. On November 14, plaintiffs filed a memorandum in opposition to the motion. The court ruled for plaintiffs and found the Governor's veto unauthorized.

OREGON

Olsen v. Oregon, 276 Or. 9, 554 P.2d 139 (1976)

Parties. This was a class action on behalf of all public school children in the State of Oregon, excepting those in school districts with the greatest wealth per pupil subject to local taxation for public education. The plaintiffs also included taxpayers who reside in low-wealth property districts with children in the public schools. The defendants were the State Attorney General and the Superintendent of Public Instruction.

Description. Plaintiffs contended that Article VIII, Section 3 of Oregon's Constitution, requiring the legislature to '. . .provide by law for the establishment of a uniform, and general system of common schools," establishes education as a "fundamental interest" for the purposes of the state's equal protection clause, requiring legislative classifications to be judged by the "compelling interest" test to determine the validity of the school finance system. Plaintiffs also contended that "uniform and general" language itself requires that the quality of a child's education as measured by dollar expenditures not be a function of the wealth of that child's family, school district, or any entity other than the state as a whole. They claimed that Oregon's school finance system is ineffective in equalizing spending from district to district, so that wealthy districts have significantly higher educational expenditures with less tax effort than poorer districts, and that the "flat grant" provision of the system has a disequalizing effect. In 1972-73, for example, a year in which Oregon spent $603

million on public elementary and secondary education, local government supplied 78% to the state's 16%, or $111 million. Of this figure, $79 million was distributed in flat grants, while only $15 million was used for equalization. The result was wide variations in per pupil expenditures between school districts within the state. The plaintiffs also claimed that the system violated the state's equal protection and tax uniformity provisions with regard to the plaintiff parent taxpayers.

Status. The suit was filed early in 1972. It was tried before a state circuit court judge in September 1973. On February 25, 1975, the trial court ruled against the plaintiffs.

On September 3, 1976, the Oregon Supreme Court affirmed the trial court's judgment. While recognizing that it could interpret the equal protection clause of the Oregon Constitution more broadly than that of the federal constitution, the Court declined to do so in this case. It rejected the test set forth in *San Antonio Independent School District v. Rodriguez* for determining whether a constitutional right is of fundamental importance or not, and it refused to find that the fact that education was explicitly mentioned in the constitution was controlling. Rather, the Court adopted a balancing test under which it "weights the detriment to the education of the children of certain districts against the ostensible justification for the scheme of school financing." The Court found that the interest impinged upon—educational opportunity—was outweighed by the state's objective in maintaining local control. The Court was also unpersuaded by plaintiffs' argument that the present system violated Article VIII, Section 3, of the Oregon Constitution, requiring a "uniform" system of Oregon schools, holding that the provision is met if the state requires and provides for a minimum of educational opportunities in the district and permits the districts to exercise local control over what they can furnish over the minimum.

PENNSYLVANIA

Danson and the School District of Philadelphia v. Casey, ____ P.2d ____, 399 A.2d 360 (S.Ct. of Pennsylvania 1979)

Parties. Plaintiffs were the School District of Philadelphia and parents of children enrolled in the Philadelphia school system suing in-

dividually and on behalf of all parents and their children who are pupils in the Philadelphia School District. Defendants were the State Treasurer and the Secretary of Education.

Description. The case challenged the Pennsylvania school finance system as it applied to Philadelphia. Philadelphia is unique among school districts in Pennsylvania in that it alone does not have the independent power to levy and collect taxes. The Philadelphia School District cannot raise funds for education unless the City Council passes enabling ordinances permitting taxes to be levied and collected. The City Council is not required to provide for taxes sufficient to meet the normal program needs of the school system, however. Plaintiffs alleged that this system of finance would result in a "truncated and uniquely limited program of education services" for the school children of Philadelphia in the 1977-78 school year and thereafter in violation of Article III, Section 14 of the state constitution which requires the state to maintain and support a "thorough and efficient" system of public education and Article III, Section 32 which guarantees equal protection of the laws. Plaintiffs sought an order enjoining defendants from making any payments of state funds until sufficient funds were available to Philadelphia or until state funds were distributed so as to provide uniformity of educational services throughout the state.

Status. Plaintiffs filed a petition for review in Commonwealth Court in April 1977 alleging that the schools would be compelled to close early in the 1976-1977 school year unless the school district received additional state funds. The predicted early closing did not occur and on June 23, 1977, plaintiffs filed an amended petition for review, the substance of which is outlined above. Defendants filed preliminary objections on the grounds that plaintiffs' petition failed to state a cause of action and that the School District of Philadelphia was without standing. On February 14, 1978, the Commonwealth Court dismissed the action, finding that plaintiffs' petition failed to state a cause of action. The court refused to recognize education as a fundamental right.

The Supreme Court of Pennsylvania affirmed the decision of the Commonwealth Court on March 14, 1979. The court stated that the school district has not alleged harm because it had no greater duty to provide education for the children of Philadelphia "than that which the Legislature, through the statutory funding scheme, has provided

the school district the means to fulfill." The language of the decision suggests that the court viewed this case as different from a number of other school finance decisions, e.g., *Serrano* and *Robinson,* since Philadelphia's educational expenditures were above the state average.

TEXAS

Wilson v. Brockette, Civil Action No. A-77-CA-223; *Bennett v. Brockette,* Civil Action No. A-77-CA-21 and *Citizens for Fair Taxes v. Brockette,* No. A-77-CA-106 (U.S. District Court, Western District of Texas)

Parties. Plaintiffs were the members of the board of trustees of the San Augustine Independent School District (Bennett) and the Leander Independent School District (Wilson) and a citizens group who brought the suit as board members, and on behalf of all property owners, taxpayers, public school children and their parents in their school districts. The defendant was the Commissioner of Education of the State of Texas.

Description. Texas distributes a large portion of state education aid according to a foundation program that is in theory designed to provide sufficient resources to provide students with a "basic instructional program." Each school district is required to pay its "local share" of the foundation program from local property tax revenues. The amount of a district's local share is determined by the value of the district's property as reported in an official compilation of the market value of the taxable property in the school districts in the state. Plaintiffs alleged that this official compilation is limited to property actually listed on the rolls of the school district, and fails to list the values of tangible and intangible personal property which are not on the tax rolls, even though such personal property is taxable under the laws of Texas. Plaintiffs alleged that it is a violation of the equal protection clause of the 14th Amendment for the state, whose purpose in creating the foundation program was to assure fairness in the distribution of state revenues, to take into account only a part of the local taxable wealth, ignoring wealth and property which are lawfully required to be taxed, but which for various reasons local districts have left off their rolls. This practice was alleged to discriminate against school districts which have relatively small amounts of personal property which are omitted from the rolls. Plaintiffs also chal-

lenged, under a pendent state law claim, the adoption of a system for determining how much taxable property is located in each school district that does not include all of the property that is made taxable by the Texas Constitution and statutes.

Status. The complaints were filed in September, 1976 *(Bennett)* and November, 1976 *(Wilson)*. On February 25, 1977, the cases were consolidated in the U.S. District Court for the Western District of Texas. *Citizens for Fair Taxes* was consolidated on May 18, 1978. On May 13, 1977, the district court overruled defendant's motion to dismiss which argued that *San Antonio Independent School District*, 411 U.S. 1 (1973) was controlling and that the court should abstain until the claim can be presented to the state courts. On July 18, 1977, the district court denied plaintiffs' motion for preliminary injunction on the ground that plaintiffs had failed to show that the failure to grant the injunction would cause them irreparable harm. The court, however, was of the opinion that there is a substantial likelihood that plaintiffs will prevail on both their federal and pendent state law claims. The court distinguished *Rodriguez* on the ground that it could perceive no rational basis for distributing state funds to school districts based on the amount of certain classes of taxable property in each district, while ignoring other classes of taxable property. The court also was of the opinion that this failure to tax certain property offended the requirement of the Texas Constitution, Article VIII, Section 1 that "Taxation shall be equal and uniform."

On June 22, 1979, the court granted plaintiffs' motion to dismiss in *Wilson*, and on August 20, 1979, the court granted plaintiffs' motion to dismiss in *Bennett*. *Citizens of Fair Taxes et al.* requested a dismissal on February 28, 1980.

WASHINGTON

Northshore School District v. Kinnear, 84 Wash.2d 685, 530 P.2d 178 (1974)

Parties. Plaintiffs were school districts, school children and their guardians *ad litem*, parents of school children, school directors and taxpayers of the State of Washington. The defendants were the State Department of Revenue, the State Superintendent of Public Instruction, the State Treasurer and members of the Board of Education in

the State of Washington, and the State of Washington.

Description. Plaintiffs alleged that as a direct result of the state school financing scheme, which makes the quality of every child's public education a function of the taxable wealth per pupil of the school district in which he resides, substantial disparity among the state's school districts exist in the dollar amount spent per pupil and therefore in the quality and extent of available educational opportunities as well as in the rate of taxes which must be paid for the same or lesser educational opportunities in violation of the state's duty to provide for the ample provision of education and of the State of Washington's and the United States' constitutional provisions guaranteeing equal educational opportunity. Plaintiffs asked the court to declare the financing system void as repugnant to the equal protection and education provisions of the state constitution and the 14th Amendment of the U.S. Constitution.

Status. The case was filed in the Washington State Supreme Court in April 1972. The original jurisdiction of the court was appropriate because of a state procedural rule allowing for appellate jurisdiction in actions against state officers. In December 1974, a divided Supreme Court of Washington upheld the state's educational finance statute. Five separate opinions were filed by the nine member court. Only three members of the court voted to uphold the system without reservation. Three other members of the court concurred in the result. Three judges dissented.

The three justices who had no reservation about the system's constitutionality denied that children were unequally treated as a result of differences among districts in assessed valuation per pupil contrary to equal protection requirements and found that a "uniform and general system" of education only requires certain minimum educational opportunities be provided.

Two of the concurring justices had substantial reservations about the constitutionality of the educational finance system, believing that the "State's contribution to the cost of educating children within its borders is inadequate." However, they found that the trial record did not clearly disclose this inadequacy. A third concurring justice found that plaintiffs had not established their case.

Three other justices joined in a strong dissent which characterized

the plurality opinion as a "legal pygmy of doubtful origin." The dissent accused the majority of ignoring the facts in the case which showed that there is a direct relationship between assessed valuation per pupil and expenditures per pupil and that state aid has nonequalizing effects. Consequently the dissenters found that the state had failed in its "paramount duty. . .to make ample provision for the education of all children" by means of a "general and uniform" system of public schools as required by the state constitution.

WASHINGTON

Seattle School District No. 1 of King County, Washington v. State of Washington, 90 Wash.2d 476, 585 P.2d 71 (1978)

Parties. Plaintiffs were the Seattle District No. 1, located in King County, Washington, and a number of individual students attending said school. The defendants were the State of Washington, the Washington State Superintendent of Public Instruction, the State Treasurer, and members of the State Board of Education.

Description. Plaintiffs challeged Washington's foundation program for financing public education as applied to them based upon Article IX, Section 1 of the state constitution which provides: "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders. . . ." They argued that 40% of Seattle's educational budget is dependent upon passage of an annual referendum. In 1975, the voters failed to pass a referendum, precipitating an educational crisis. Seattle challenged the extend to which the finance system subjects the educational program to the whims of local voters who have shown themselves unwilling to support the basic educational program. They contended that without funds provided by referendum, the Seattle schools cannot meet state-imposed educational requirements. The theoretical base for the suit is found in the concurring and dissenting opinions in *Northshore School District v. Kinnear,* 84 Wash.2d 685, 530 P.2d 178 (1974), in which the plurality upheld Washington's school finance law against a *Serrano*-type challenge.

Status. On January 14, 1977, the Thurston County Superior Court, after a trial lasting two months, entered an 84-page opinion accepting plaintiffs' contentions and holding the foundation program

unconstitutional as applied to Seattle. The court held (1) that the level of funding provided by the state for the 1975-76 school year was insufficient to comply with the paramount duty of the state under Article IX, Section 1 to fund the basic program of education required by state law; (2) the legislature had not expressly defined "basic education" or determined the substantive content of a basic program of education to which the children of the state are entitled; and (3) the legislature had failed to provide a method for fully sufficient funding of such education without reliance on special excess levies. The court directed the legislature to adopt a funding system that would remove any reliance on excess levies by July 1, 1979, and retained jurisdiction so that it could order appropriate relief if the legislature failed to act within that period.

On September 28, 1978, the Supreme Court of Washington affirmed the trial court's holding but extended the date for legislative compliance to July 1, 1981. The Washington legislature moved rapidly to respond to the supreme court and in 1979 enacted a high foundation aid system with a small and regulated local tax levy.

WISCONSIN

Buse v. Smith, 74 Wis.2d 550, 247 N.W.2d 141 (Wisconsin Supreme Court 1976)

Parties. Plaintiffs were "negative aid" school districts; residents, taxpayers, and school board members of "negative aid" districts; and parents of children who attend "negative aid" district schools. Defendants were the Wisconsin State Treasurer, the Superintendent of Public Instruction, and the Wisconsin Department of Public Instruction.

Description. In 1973, the Wisconsin legislature enacted reform legislation, the purpose of which was to remove property wealth as a factor in determining the amount of per pupil expenditures. In the 1973 School Finance Act, the legislature set guaranteed primary and secondary valuations for all school districts and established a formula by which districts determined the mill rate needed to produce the per pupil expenditure it wished to make. "Negative aid" was a recapture device whereby districts spending in excess of a ceiling set by the state were required to pay a portion of their property tax revenues into the

state general fund, ultimately to be redistributed to other school districts in the state.

Status. On November 30, 1976, the Wisconsin Supreme Court struck down the negative aid provision of the 1974 school finance law. The principal opinion, representing the views of two justices, held negative aid to be a local tax. With this as its point of departure, the opinion concluded that negative aid violates the principle embodied in the uniformity clause of Article VIII, Section 1, of the state constitution that taxes levied and collected in one district cannot be used for the direct benefit of other school districts or for the sole benefit of the state.

The concurring opinion, representing the views of two additional members of the Court, argued that negative aid is a state tax, but that the result is the same.

The three dissenting judges argued that the purpose of school districts is not merely to educate their own children, but to share in the state-wide educational system. The dissent found no constitutional deficiency in using tax money raised in one district to benefit the entire system of public education in the state.

WISCONSIN

Tooley v. O'Connel, 77 Wis.2d 422, 253 N.W.2d 335 (Wisconsin Supreme Court 1977)

Parties. Plaintiffs were taxpayers of Milwaukee, Wisconsin, and their children who attend the public schools in Milwaukee. Defendants were the school directors of the Milwaukee School Board, the Director of the State Department of Revenue, the Tax Commissioner of the City of Milwaukee, City Treasurer, and City Comptroller.

Description. The suit challenged the constitutionality of the Wisconsin School Finance statute on the grounds that (1) to the extent that it relies primarily on local property taxes it produces wide disparities in educational expenditures; (2) it taxes property owners at different rates throughout the state for the same public purpose; (3) it nullifies the authority vested in the common council of Milwaukee to provide for a quality education for its children; (4) it establishes a discrim-

inatory tax burden on owners of real property as distinguished from other residents and taxpayers of the district. These defects, it is alleged, violate Article I, Sections 1, 9, 17, Article VIII, Section 1, Article X, Sections 2, 3, 4 and 5 of the Wisconsin Constitution.

Status. The suit was filed January 29, 1975. On August 12, 1975, the Circuit Court of Milwaukee County filed a memorandum decision sustaining a demurrer on behalf of the defendants and dismissing the suit. The dismissal was reversed by the Wisconsin Supreme Court on May 3, 1977. The court found that the complaint passed the test required in declaratory judgment actions to survive a motion to dismiss, i.e., that a justiciable controversy exists, that the controversy is between persons with adverse interests, the plaintiff has a legally protectible interest, and the issue is ripe for judicial determination. The court remanded the case to the Circuit Court for trial.

The case was dismissed voluntarily by the plaintiffs without prejudice. The City of Milwaukee subsequently initiated *Kukor v. Thompson* (see pending cases above).